



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

COPY OF PAPERS  
ORIGINALLY FILED

IN RE THE APPLICATION OF:

Inventor : Mitchell R. Swartz

Serial no. 09/ 750, 480

Filed: 12/28/00

For: **METHOD AND APPARATUS  
TO MONITOR LOADING  
USING VIBRATION**

PAPER: 7 (Applicant's Count)  
Group Art Unit:3641

Examiner: Behrend, H.

This is a continuation of Serial no. 07/ 371,937  
Filed: 06/27/89

February 12, 2002

**DECLARATION OF DR. MITCHELL SWARTZ  
SUPPORTING PETITION**

I, Mitchell R. Swartz, declare that I am a citizen of the United States of America and the inventor of the invention described in the above-entitled application.

1. With respect to the above-entitled and other of Applicant's applications, there does not appear to have been serious and substantive compliance by Mr. Harvey Behrend either with the record of the Office, with the past Decision of the Board, with the past Decision by the Federal Court, or with the Rules and Guidelines under which Mr. Harvey Behrend presumably operates.

2. Mr. Behrend has "taken" all my applications in what appears to be retaliation for a Federal lawsuit.

3. In the above-entitled action, and in at least three other of my applications, which have been "taken" by Mr. Behrend, he has demonstrated a show-no-care attitude for the record, rules, and guidelines.

4. Mr. Behrend, in several of his communications, including the above-entitled action, appears to be coercing me into double patenting for reasons not presently clear. He does this while ignoring both the record and the invention described by the application and claims in question.

5. In the above-entitled Application, Serial no. 09/ 750, 480, Filed: 12/28/00 [a continuation of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend in his Communication #5, mailed 2/12/01 has attempted to force me to double patent. Mr. Behrend's request for a new second "first-restriction" was neither necessary nor proper for several reasons. Attention is directed to the fact that the original specification, claims and drawings of Serial no. 07/371,937 already went through a restriction by the Primary Examiner Daniel Wasil on September 16, 1991. This is relevant because this application is a continuation of Serial no. 07/371,937 which was restricted by Primary Examiner Daniel Wasil, delivered after his careful study of the original specification and claims. Mr. Wasil separated 07/371,937 into three inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

6. Corroborating this behavior by Mr. Behrend is the following:

A. In Serial no. 09/568,728, Filed: 05/11/2000 [a division of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend in his Communication #4, mailed 10/11/01, attempted to force me to double patent, by his unsupported demand for a new second "first-restriction". Said attempt was neither necessary nor proper in light of the original application because the original application was restricted already. The Primary Examiner Daniel Wasil separated 07/371,937 into three inventions [September 16, 1991]. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

B. In Serial no. 09/ 573,381, Filed: 05/19/2000 [a division of Serial no. 07/ 760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #5, mailed 2/12/01, attempted to force me to double patent by his unsupported demand for a new second "first-restriction". Said attempt was neither necessary nor proper in light of the original application because the original application was restricted already. The original specification, claims and drawings of Serial no. 07/760,970 have already gone through a restriction by the Primary Examiner Daniel Wasil on June 8, 1992. Mr. Wasil separated 07/760,970 into five inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

C. In Serial no. 09/ 750,765, Filed: 12/28/00 [a continuation of Serial no. 07/ 760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #2, mailed 5/7/01 has attempted to force me to double patent. Mr. Behrend's request for a new second "first-restriction" was neither necessary nor proper for several reasons. The original specification, claims and drawings of Serial no. 07/760,970 have already gone through a restriction by the Primary Examiner Daniel Wasil on June 8, 1992. Mr. Wasil separated 07/760,970 into five inventions. For the convenience of Mr. Behrend, a copy of this relevant first restriction by Examiner Wasil was sent to Mr. Behrend but he, thereafter, has apparently ignored it.

7. Although Examiner Wasil personally signed the documents when the first restrictions were made, by contrast Mr. Behrend did not personally sign some of the documents in which his improper demands for double patenting were made.

A. This includes in Serial no. 09/ 750, 480, Filed: 12/28/00 [a continuation of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend in his Communication #2, did not sign the document.

B. This includes in Serial no. 09/ 750, 480, Filed: 12/28/00 [a continuation of Serial no. 07/ 371,937, Filed: 06/27/89], Mr. Behrend in his most recent unnumbered Notice, did not sign the document.


C. In Serial no. 09/ 750,765, Filed: 12/28/00 [a continuation of Serial no. 07/ 760,970, Filed: 09/17/1991], Mr. Behrend in his Communication #2, with such restriction did not sign the document.

8. Mr. Behrend appears to have ignored each and every of Applicant's requests for constructive assistance and suggestions in drafting one or more acceptable claims [pursuant to MPEP 707.07(j)] and in making constructive suggestions [pursuant to MPEP 706.03(d)].

I declare that all statements herein of my own knowledge are true and that all statements made on information and belief are believed to be true.

Signature of Inventor:

February 12, 2002

  
\_\_\_\_\_  
Mitchell R. Swartz, ScD, MD, EE  
Post Office Box 81135  
Wellesley Hills, Mass. 02481